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CF 532 (3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

SECOND APPEAL No. 303 /2004 Single Bench

P. R. No. 13.2.04
Presented by Shri ... Rishi Tamrakar
Advocate ..... for Shri
I. D. R. S. ...

APPELLANT
DEFENDANT

SMT. JANKI BAI WIDOW OF SHRI SHANKAR LAL GUPTA AGED ABOUT 73 YEARS, R/O GONDPARA BILASPUR TAHSIL AND DISTRICT – BIALASPUR

VERSUS

RESPONDENT
PLAINTIFF

S R:

SMT. SHAIL DEVI SARAF W/O SHRI SHANKAR LAL SARAF R/O GONDPARA BILASPUR.

SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

(F9)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक SA. 303/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	14-01-05 Dr. N.K.Shukla, Sr. Counsel with Shri Shailendra Shukla Counsel for the appellant. Heard on the question of admission. This is defendant / tenant's appeal filed against the judgment and decree passed by the First Additional District Judge, Bilaspur on 13-04-2004 in Civil Appeal No. 8-A/2004. In this case the suit filed by the respondent / landlord was decreed by the trial Court which was subsequently confirmed by the first appellate Court by the impugned judgment and decree. The plaintiff / respondent filed a suit for ejactment against the defendant averring that she had purchased the suit property through a registered sale deed dated 26-08-97 from one Smt. Shashi Kiran Pandey and the first floor of which was let out by the vendor on a monthly rent of Rs. 15/-. The suit accommodation was purchased by Smt. Shashi Kiran Pandey from its previous owner Sukhdaiya Bai through a registered sale deed dated 20-03-1975. After purchasing the suit property the respondent / plaintiff had orally informed the defendant / appellant about the purchase and the vendor Shashi Kiran Pandey also informed the defendant through a registered notice regarding the said sale. However, the appellant did not pay rent nor delivered the vacant possession of the suit accommodation and took a stand that Sukhdaiya Bai had gifted her the said property in the year 1973. It was further pleaded that the appellant had submitted her objection in the office of Municipal	

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मामला क्रमांक S.A. 303/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Corporation, Bilaspur on 28-03-98 simply objecting that she was not given an opportunity of purchasing the said property whereas the previous owner Sukhdaiya Bai stated before the IV Civil Judge Class - I, Bilaspur in Civil Suit No. 93-A/88 that the appellant was the tenant and thus the appellant disclaimed the title of the respondent. The suit was filed on the ground of bona fide need under Section 12 (1) (e) of the M.P. Accommodation Control Act (hereinafter referred to as the *Act* for brevity) and also on the ground of disclaimer under Section 12 (1)(c)of the Act. The said Civil suit was also in respect of non user of the rented accommodation for more than six months under Section 12 (1)(d) and under Section 12(1)(i) and for non payment of rent under Section 12(1)(a) of the Act. The appellant / defendant however denied the relationship of landlord and tenant between the plaintiff and herself stating that Smt. Shashi Kiran Pandey had no authority to transfer the suit property and no notice was given to her regarding the purchase of the same. It was further averred that the suit house was taken on monthly rent of Rs. 11/- per month by the appellant in the year 1962. However, the landlord Sukhdaiya Bai gifted the suit premises in the year 1973 and since then she became the owner thereof. One Kamal Soni and Kailash Soni residing on the ground floor acknowledged her as their landlord and started paying the rent and on this ground the defendant contested the suit.

The trial Court decreed the suit holding that Shashi Kiran Pandey was the owner of the suit property which was validly sold by

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

her to the plaintiff and the possession of the appellant was in the capacity of tenant. It was also held that a notice for vacating the premises as the appellant had her own accommodation, has also been held to be proved. The gift of Sukhdaiya Bai in favour of the appellant was held to be disproved. Pleading of adverse possession has also been held to be disproved and accordingly the suit was decreed in favour of the plaintiff against the defendant and decree for possession, payment of balance of rent of Rs. 330/-, further rent @ Rs. 15/- per month, and for the delivery of possession, was passed in favour of the plaintiff. The defendant preferred the first appeal and the same was also dismissed by the first appellate Court and the judgment and decree passed by the trial Court was confirmed.

Learned first appellate Court while dealing with issue No. 5 arrived at the conclusion that the appellant failed to prove issue No. 5 before the trial Court. The trial Court also held that the plaintiff has failed to prove that the suit property was gifted to her by Sukhdaiya Bai in the year 1973. The above finding is based on the following facts:-

A. That the deed was unregistered.

B. That Sukhdaiya Bai herself sold the property through a registered sale deed on 20-03-75 to Shashi Kiran Pandey

C. That Sukhdaiya Bai had stated on oath before the Civil Judge Class – II that the appellant was her tenant and a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

written statement to this effect was also filed by said Sukhdaiya Bai and as per the provisions of Section 80 of the Indian Evidence Act which deals with presumption as to the document produced as record of the evidence and that the documents are presumed to be genuine documents and the statements made by the persons signing it, are true. According to Section 79 of the Indian Evidence Act the presumption is attached to the genuineness of the certified copies of the documents.

D. That the appellant had submitted objection of Annexure P/1 in the office of the Municipal Corporation, Bilaspur on 27-05-98 and by this objection the appellant had objected against mutation on the ground that she had been residing in the said house since 45-46 years and at the time of purchasing the house from Sukhdaiya Bai the objector was not asked whether she would like to purchase the property or not, which reveals that till 27-03-98 the appellant was not relying on the gift deed which she claims to be executed in her favour on 14-04-1972. Though the objection has been denied by the appellant, no material evidence has been adduced by her to the effect that she ever tried to get her name mutated on the basis of gift deed allegedly executed in the year 1973. Thus, on the ground mentioned above the learned appellate Court arrived at the conclusion that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

factum of gift deed was introduced for the first time in the year 1999.

Learned counsel for the appellant has challenged the finding of both the Courts below on the ground that the Courts below have heavily relied on the statement of Sukhdaiya Bai in the previous suit and written statement of Sukhdaiya Bai and therefore Section 33 of the Evidence Act be only evidence given by the witnesses in the judicial proceedings is relevant in the later stage provided that the proceeding was between the same parties or their representatives and the question in issue was substantially the same and the adverse parties in the first proceeding had a right and opportunity to cross examine. As the appellant was not party in the said proceeding, the evidence of Sukhdaiya Bai can not be relied upon as against the appellant in the present proceeding. However, both the Courts below while deciding issue No. 5 have drawn a presumption on the basis of the above statements as per Sections 79 and 80 of the Evidence Act and the document of gift deed has not been accepted on various other grounds enumerated in the foregoing paragraphs. As the appellant has herself admitted that she was a tenant of Sukhdaiya Bai and at the moment it is held that registered gift deed conferred no title to the appellant, the appellant was estopped from challenging the title of subsequent purchaser as per the provisions of Section 116 of the Indian Evidence Act and thus the concurrent finding of the Courts below that the appellant

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was tenant of the plaintiff and that he has failed to prove his gift deed, are the findings of fact.

From the discussion above I do not find that any substantial question of Law is involved for adjudication of this appeal and the substantial question of Law formulated by the appellant that the statement given in a different proceeding in which the appellant was not party contrary to Section 33 of the Evidence Act has no application in this case as both the Courts below have attached the presumption to the statements/ documents in the earlier proceedings which has not been effectively rebutted by the appellant by leading cogent evidence and that both the Courts below have recorded a concurrent finding of fact that on the basis of preponderance of probabilities the document of Annexure D-1 was not in existence before 16-03-99 when the appellant for the first time took a stand that the gift deed was executed in her favour in the year 1973 and as such it was a fabricated document.

In the result, there is no substance in the appeal and the same is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

JJO